

Notice of Allowability

Application No.

10/807,116

Examiner

Nikita Wells

Applicant(s)

KAJI ET AL.

Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to "Amendment" received 21 March 2005.
2. ☒ The allowed claim(s) is/are 1-10.
3. ☒ The drawings filed on 24 March 2004 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☒ All b) ☐ Some* c) ☐ None of the:
 1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
 - * Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

Nikita Wells
Primary Examiner
Art Unit: 2881

DETAILED ACTION

Allowable Subject Matter

1. Claims 1-10 are allowed.
2. The following is an examiner's statement of reasons for allowance:

The Applicant amended claims 1-6 and 8, provided a substitute Specification, and presented arguments in favor of allowance of the newly amended claims, according to the "Amendment" received March 21, 2005. The Examiner found the substitute Specification in order and proper form.

With respect to the newly amended independent claim 1, the Applicant demonstrated to the Examiner's satisfaction that the 35 U.S.C. 102(b) rejection over the reference of O.L. Krivanek (4,743,756) is not applicable to the Applicant's invention. O.L. Krivanek, as well as any other prior art, fails to disclose or make obvious an electron microscope having an energy filter for measuring electron beam energy loss spectra, wherein the electron beam energy loss spectrum of an electron beam irradiated on a sample surface at a position no more than 13 micrometers shifted away from the optical axis of said electron microscope has an energy deviation of 1 eV or below relative to that of said electron beam irradiated on said sample surface.

With respect to the newly amended independent claims 2 and 4, the Applicant demonstrated to the Examiner's satisfaction that the 35 U.S.C. 102(e) rejection over the reference of Taniguchi et al. (2004/0000641 A1) is also not applicable to the Applicant's invention since Taniguchi et al., or any other prior art, fail to disclose or make obvious an electron microscope having an energy filter, wherein the electron beam directing means and path

correction means, such as deflector coils, should be provided at two different positions relative to the energy dispersion means to correct deviations of electronic beams both before and after the electronic beams passing the energy dispersion means. Therefore, the independent claims 1, 2, and 4 are allowed. The dependent claims 3 and 5-10 are allowed by virtue of their dependence upon claim 2.

Conclusion

3. Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nikita Wells whose telephone number is (571) 272-2484. The examiner can normally be reached on 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John R Lee can be reached on (571) 272-2477. The central fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.

5. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Nikita Wells". The signature is fluid and cursive, with the first name "Nikita" and the last name "Wells" clearly distinguishable.

Nikita Wells, Primary Examiner
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April 1, 2005